

## **BILL ANALYSIS**

Senate Research Center

S.B. 1074  
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Business & Commerce  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 1074 allows a property and casualty insurance company to legally deliver insurance documents and notices electronically to an insured when the insured agrees to conduct business by electronic means. This consent is optional. Insurance customers want to be able to handle their insurance needs entirely online. Insurers have been held back by underlying laws that have not been updated for the way insurance customers desire to do business.

Insurers know how to transmit electronically, but some sections in the laws specify how some notices must be delivered. Documents can be provided electronically with the consumer's consent, but this law will clarify electronic delivery will comply with the state's laws and meet the consumer's desire to handle their insurance transactions entirely online.

S.B. 1074 pertains to the method of delivering these documents and notices. A person can always choose to end his or her consent to electronic delivery.

Most states have adopted the Uniform Electronic Transactions Act which validates electronic versions of signatures, records, and storage as the legal equivalent to their paper counterparts. Additionally, the federal government enacted the Electronic Signatures in Global and National Commerce Act in 2000 that allows the use of electronic records to satisfy any statute, regulation, or rule of law requiring that such information be provided in writing.

When consenting to do business electronically, consumers will be able to monitor and handle their business needs from anywhere in the world where there is Internet access. This bill does not change the role of the independent insurance agent or any other agent.

The intent of S.B. 1074 is to make e-commerce a viable and equivalent channel of communication. A process may not be required for e-commerce transactions unless it is also required for the parallel paper process. Extra requirements may not be added solely because the transaction is in electronic form.

S.B. 1074 amends current law relating to electronic transmission of documentation involved in certain insurance transactions.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the commissioner of insurance is rescinded in SECTION 2 (Section 35.0045, Insurance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 35.001, Insurance Code, by amending Subdivision (2) to redefine "regulated entity" and adding Subdivisions (3), (4), and (5) to define "deliver by electronic means," "party," and "written communication."

SECTION 2. Amends Chapter 35, Insurance Code, by amending Section 35.004 and adding Section 35.0045, as follows:

Sec. 35.004. MINIMUM STANDARDS FOR REGULATED ENTITIES ELECTRONICALLY CONDUCTING BUSINESS WITH CONSUMERS. (a) Authorizes a notice to a party or other written communication with a party required in an insurance transaction or that is to serve as evidence of insurance coverage, subject to Subsection (c), be delivered, stored, and presented by electronic means only if the delivery, storage, or presentment complies with Chapter 322 (Uniform Electronic Transactions Act), Business & Commerce Code.

(b) Provides that delivery of a written communication in compliance with this section is equivalent to any delivery method required by law, including delivery by first class mail, first class mail, postage prepaid, or certified mail.

(c) Authorizes a written communication to be delivered by electronic means to a party by a regulated entity under this section if:

(1) the party affirmatively consented to delivery by electronic means and has not withdrawn the consent;

(2) the party, before giving consent, is provided with a clear and conspicuous statement informing the party of:

(A) any right or option the party is authorized to have for the written communication to be provided or made available in paper or another nonelectronic form;

(B) the right of the party to withdraw consent under this section and any conditions or consequences imposed if consent is withdrawn;

(C) whether the party's consent applies only to a specific transaction for which the written communication is required to be given or to identified categories of written communications that are authorized to be delivered by electronic means during the course of the relationship between the party and the regulated entity;

(D) the means, after consent is given, by which a party is authorized to obtain a paper copy of a written communication delivered by electronic means; and

(E) the procedure a party is required to follow to withdraw consent under this section and update information needed for the regulated entity to contact the party electronically; and

(3) the party, before giving consent, is provided with a statement identifying the hardware and software requirements for the party's access to and retention of a written communication delivered by electronic means and consents electronically or confirms consent electronically in a manner that reasonably demonstrates that the party can access a written communication in the electronic form used to deliver the communication.

(d) Requires the regulated entity, after consent of the party is given, in the event a change in the hardware or software requirements to access or retain a written communication delivered by electronic means creates a material risk that the party may not be able to access or retain a subsequent written communication to which the consent applies, to:

(1) provide the party with a statement identifying the revised hardware and software requirements for access to and retention of a written communication delivered by electronic means and disclosing the right of

the party to withdraw consent without the imposition of any condition or consequence that was not disclosed under Subsection (c)(2)(B); and

(2) comply with Subsection (c)(3).

(e) Provides that this section does not affect requirements for content or timing of any required written communication.

(f) Authorizes a written communication, if the written communication provided to a party expressly requires verification or acknowledgment of receipt, to be delivered by electronic means only if the method used provides for verification or acknowledgement or receipt.

(g) Prohibits the legal effectiveness, validity, or enforceability of any contract or policy of insurance executed by a party from being denied solely due to the failure to obtain electronic consent or confirmation of consent of the party in accordance with Subsection (c)(3)(B).

(h) Provides that a withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a written communication delivered by electronic means to the party before the withdrawal of consent is effective. Provides that a withdrawal of consent is effective within a reasonable period of time after the date of the receipt by the regulated entity of the withdrawal. Authorizes failure by a regulated entity to comply with Subsection (d) to be treated by the party as a withdrawal of consent.

(i) Requires the entity, if the consent of a party to receive a written communication by electronic means is on file with a regulated entity before September 1, 2013, and if the entity intends to deliver to the party written communications under this section, then before the entity is authorized to deliver by electronic means additional written communications, to notify the party of the written communications that are authorized to be delivered by electronic means that were not previously delivered by electronic means and the party's right to withdraw consent to have written communications delivered by electronic means.

(j) Prohibits an oral communication or a recording of an oral communication, except as otherwise provided by law, from qualifying as a written communication delivered by electronic means for purposes of this chapter.

(k) Provides that, if a signature on a written communication is required by law to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the notary public or other authorized person and the other required information are attached to or logically associated with the signature or written communication.

Sec. 35.0045. RULES. Deletes existing Subsection (a) designation. Requires the commissioner of insurance (commissioner) to adopt rules necessary to implement and enforce this chapter.

Deletes existing Subsection (b) requiring that the rules adopted by the commissioner under this section include rules that establish minimum standards with which a regulated entity is required to comply in the entity's electronic conduct of business with other regulated entities and consumers.

SECTION 3. Amends Chapter 35, Insurance Code, by adding Section 35.005, as follows:

Sec. 35.005. EXEMPTION FROM CERTAIN FEDERAL LAWS. Provides that this chapter modifies, limits, or supersedes the provisions of the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) as authorized by Section 102 of that Act (15 U.S.C. Section 7002).

SECTION 4. Provides that this Act applies only to a written communication that is delivered by electronic means on or after January 1, 2014. Provides that a written communication delivered by electronic means before January 1, 2014, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 5. Effective date: September 1, 2013.